

101st CONGRESS
2d Session

SENATE

REPORT
101-464

DECEPTIVE MAILINGS PREVENTION ACT OF
1990

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 273

TO AMEND TITLE 39, UNITED STATES CODE, TO DESIGNATE AS NONMAILABLE MATTER SOLICITATIONS OF DONATIONS WHICH COULD REASONABLY BE MISCONSTRUED AS A BILL, INVOICE, OR STATEMENT OF ACCOUNT DUE, SOLICITATIONS FOR THE PURCHASE OF PRODUCTS OR SERVICES WHICH ARE PROVIDED EITHER FREE OF CHARGE OR AT A LOWER PRICE BY THE FEDERAL GOVERNMENT CONNECTION OR ENDORSEMENT, UNLESS SUCH MATTER CONTAINS AN APPROPRIATE, CONSPICUOUS DISCLAIMER, AND FOR OTHER PURPOSES



SEPTEMBER 14 (legislative day, SEPTEMBER 10), 1990.—Ordered to be printed

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SEPTEMBER 14 (legislative day, SEPTEMBER 10), 1990.—Ordered to be printed

Mr. BENTSEN, from the Committee on Finance,
submitted the following

REPORT

[To accompany S. 273]

The Committee on Governmental Affairs, to which was referred the bill (S. 273) to designate as nonmailable matter solicitations of donations which could reasonably be misconstrued as a bill, invoice, or statement of account due, solicitations for the purchase of products or services which are provided either free of charge or at a lower price by the Federal Government connection or endorsement, unless such matter contains an appropriate, conspicuous disclaimer, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill as amended do pass.

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The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Deceptive Mailings Prevention Act of 1990".

SEC. 2. AMENDMENTS TO TITLE 39.

(a) **PROHIBITION OF DECEPTIVE MAILINGS.**—Section 3001 of title 39, United States Code is amended by redesignating subsections (f) and (g) as subsections (i) and (j) respectively, and by inserting after subsection (e) the following:

"(f) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service; and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

"(1) such nongovernmental entity has such expressed connection, approval or endorsement;

"(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: 'THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.', or a notice to the same effect in words which the Postal Service may prescribe; and

"(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: 'THIS IS NOT A GOVERNMENT DOCUMENT.', or a notice to the same effect in words which the Postal Service may prescribe; or

"(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

"(g) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the contribution of funds or membership fees and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

"(1) such nongovernmental entity has such expressed connection, approval or endorsement;

"(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: 'THIS ORGANIZATION HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.', or a notice to the same effect in words which the Postal Service may prescribe; and

"(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: 'THIS IS NOT A GOVERNMENT DOCUMENT.', or a notice to the same effect in words which the Postal Service may prescribe; or

"(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(b) **DECEPTIVE MAILINGS AS FALSE REPRESENTATIONS.**—Section 3005(a) of title 39, United States Code, is amended by striking out "section 3001(d)" each place that it appears and inserting in lieu thereof "section 3001 (d), (f), or (g)".

SEC. 3. REVIEW AND REPORT BY THE UNITED STATES POSTAL SERVICE.

No later than 90 days after the date of enactment of this Act, the United States Postal Service shall—

(1)(A) conduct a comprehensive review to determine if the provisions of section 123.33 of the Domestic Mail Manual (as in effect on such date of enactment) are being appropriately observed; and

(B) take appropriate measures to ensure that any misapplication or misunderstanding of such provisions is corrected among any postal personnel who are responsible for carrying them out;

(2) conduct a comprehensive review to determine the feasibility of establishing a procedure whereby a sender of mail matter which is denied entry into the mails on the basis of incorrect mail preparation, postage due, or addressing may, through expedited proceedings, obtain a final agency decision as to the mailability of such matter; and

(3) submit a written report to the Senate and the House of Representatives describing its findings and actions under this section.

SEC. 4. COORDINATION OF FUNCTIONS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

The United States Postal Service shall consult and coordinate the functions and administration of the provisions of this Act and the amendments is made by this Act with the Secretary of the Department of Health and Human Services and the functions of the Secretary in the administration of section 428 of the Medicare Catastrophic Coverage Act of 1988 (42 U.S.C 1320b-10).

SEC. 5. EFFECTIVE DATE.

The amendments made by this Act shall apply to matter deposited for mailing and delivery on or after 180 days after the date of the enactment of this Act.

Amend the title so as to read: "To amend title 39, United States Code, to designate as nonmailable matter solicitations for the purchase of goods or services, or solicitation of donations which could reasonably be construed as implying any Federal Government connection or endorsement, unless such matter contains an appropriate, conspicuous disclaimer, and for other purposes."

Amend the title so as to read:

To amend title 39, United States Code, to designate as nonmailable matter solicitations for the purchase of goods or services, or solicitations for the purchase of goods or services, or solicitation for donations which could reasonably be construed as implying any Federal Government connection or endorsement, unless such matter contains an appropriate, conspicuous disclaimer, and for other purposes.

I. PURPOSE

The purpose of this legislation is to amend title 39 of the United States Code to designate as nonmailable matter solicitations for donations, memberships or the sale of goods or services which are offered by implying an endorsement by or organizational connection with the Federal Government where none exists, unless such matter contains a conspicuous disclaimer of any such endorsement or connection.

II. BACKGROUND AND NEED FOR LEGISLATION

In recent years, a growing number of individuals and organizations, both for profit and nonprofit, have adopted a marketing technique which uses words, phrases, names, symbols, and envelope designs in a manner that causes their mailed matter to mislead the recipient into believing the mail has come from a government entity or an organization whose mailed matter is connected with or endorsed by the government.

A disproportionate amount of this deceptive mail seems to be targeted at the elderly with the apparent aim of instilling fear among Social Security recipients and Medicare participants. The oftentimes financially hard pressed senior citizen is urged to make a contribution or purchase a service or product. It is infrequent, at best, that contributions solicited under such circumstances are used for the stated purpose of that the cost of products or service bears any relationship to actual value. More often than not, the contributions are used to cover an organization's administrative costs or for future direct mail solicitations. An individual might also find, for

example, that he has paid several dollars for a cheap plastic replica of a Social Security card.

Senior citizens are not the only targets of government look-alike mail. Lawyers are targeted with mailings purporting to contain time sensitive documents from the Department of Justice, only to find themselves on receiving end of a solicitation. Parents find themselves being offered assistance-for-a-fee in obtaining the "I.R.S. required" Social Security number for their newborn children. The assistance is usually nothing more than a form and instructions, very much like what is readily available at no charge from the government.

The Committee recognizes that the vast majority of mailings by nonprofit organizations to solicit membership or contributions for their causes and by businesses in promoting the sale of goods and services are carried out in a forthright manner, without any intention of implying a government connection or endorsement. With respect to such mailings, the Committee does not consider the mere use of a word or symbol in a name or logo to be deceptive, in and of itself. Rather, the Committee recognizes that enactment of S. 273 would require the U.S. Postal Service to judge mailings on the overall appearance and impression of the mailing piece in order to determine if the use of seals, insignia, or names is deceptive in its effect in a way that could cause a reasonable person to infer a Federal Government connection, approval, or endorsement where none exists.

III. LEGISLATIVE HISTORY

S. 273, the Deceptive Mailings Prevention Act of 1989, was introduced on January 25, 1989. The Subcommittee on Federal Services, Post Office and Civil Service held a hearing on February 28, 1989. Witnesses included: Senators William Roth, John Heinz and Joseph Lieberman; Messrs. Jack Swaggerty, Tim Mahoney and George Davis of the U.S. Postal Service; Erling Johnson of the American Association of Retired Persons; Cary Baer representing the Third Class Mailers Association; Richard Barton of the Direct Marketing Association; Mark Silbergeld on behalf of the Alliance of Nonprofit Mailers; and Robert Brown of the Nonprofit Mailers Federation.

While all those who testified were generally supportive of S. 273, witnesses representing both nonprofit and for profit mailers expressed concern about the prospect of incorrect or inconsistent enforcement of its provisions by postal officials. The problem of incorrect or inconsistent local decisions is not new. The Committee has received a number of complaints from nonprofit and commercial bulk mailers whose mail has been denied entry into the postal system due to allegedly incorrect preparation, postage, or addressing. Mailers indicate that they have brought these complaints, which appear to be inherent in a decentralized decision making system, to the attention of top postal management. However, mailers indicate that little progress has been made addressing this situation.

A requirement that the Postal Service address such concerns through several studies to be completed in advance of the effective date of the Act was incorporated, along with technical corrections,

into an amendment in the nature of a substitute which was unanimously polled out of the Subcommittee on March 27, 1990. The Committee favorably reported the bill, as amended by the Subcommittee, by unanimous voice vote on March 29, 1990.

In connection with the studies required by the Committee substitute, the Committee anticipates that postal management will consider a procedure to deal expeditiously with incorrect or inconsistent decisions, rather than leaving their resolution to a lengthy and costly administrative appeals procedure. In examining the feasibility of an expedited dispute resolution procedure, the Committee expects the Postal Service to explore whether it would be more cost effective to afford the mailer an opportunity to request an advisory opinion if the local postal acceptance official refuses to seek one himself.

IV. SECTION-BY-SECTION ANALYSIS

S. 273, as ordered reported by the Committee, contains the following provisions:

SECTION 1. SHORT TITLE

This section states that the Act may be cited as the "Deceptive Mailings Prevention Act of 1990."

SECTION 2. AMENDMENTS TO TITLE 39

This section amends section 3001 of title 39, United States Code by adding two categories of nonmailable matter.

New subsection (f) provides that, unless a notice of disclaimer is included, matter which solicits for the purchase of or payment for goods and services, and which contains a seal, insignia, trade, or brand name, or other term or symbol that could reasonably be construed as implying a connection with the government where none exist is nonmailable. The notice disclaiming any connection with or endorsement by the government must be included on both the mailing wrapper (envelope) and mailed matter. An exception is provided for publications for which the addressee has paid or agreed to pay or otherwise indicated a desire to receive the publication so long as any such solicitation contained therein is not made by or on behalf of the publisher of the publication.

Subsection (g) provides the same restrictions and conditions as contained in subsection (f) for matter that solicits contributions or the payment of membership fees.

SECTION 3. REVIEW AND REPORT BY THE UNITED STATES POSTAL SERVICE

This section provides that within three months of enactment of the Act the Postal Service shall conduct two studies. Paragraph (1) of section 3 requires the Postal Service to determine whether postmasters are complying with the provisions of section 123.33 of the Domestic Mail Manual, relating to the authority of postmasters with respect to mailability of matter because of its content. The second paragraph requires a study of the feasibility of establishing a system for expedited review of determinations as to mailability of matter denied entry into the mails.

SECTION 4. COORDINATION OF FUNCTIONS WITH THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

This section requires the Postal Service to coordinate its enforcement effort with that of the Department of Health and Human Services as set forth at 42 United States Code 1320b-10.

SECTION 5. EFFECTIVE DATE

The effective date is set at 180 days after enactment.

V. ESTIMATED COST OF LEGISLATION

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 4, 1990.

Hon. JOHN GLENN,
Chairman, Committee on Governmental Affairs,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S. 273, the Deceptive Mailings Prevention Act of 1990, as ordered reported by the Senate Committee on Governmental Affairs, March 29, 1990. CBO estimates that enactment of this bill would result in no significant cost to the federal government and in no cost to state or local governments.

S. 273, would prohibit the mailing of solicitations by nongovernmental entities for the purchase of products or services or for the contribution of funds that imply any federal government approval or endorsement. The bill would also require the U.S. Postal Service, no later than 90 days after enactment, to conduct comprehensive reviews to determine if the provisions regarding nonmailable items are being appropriately observed, and to determine the feasibility of establishing a procedure for expedited decisions regarding the mailability of certain matter.

Based on information from the Postal Service, CBO estimates that enactment of this bill would result in no significant cost to the federal government. Enforcement of the bill's prohibitions would be carried out as part of the Postal Service's normal operations.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mitchell Rosenfeld, who can be reached at 226-2860.

Sincerely,

ROBERT D. REISCHAUER,
Director.

VI. REGULATORY IMPACT

Paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate "the regulatory impact which would be incurred in carrying out the bill."

S. 273 requires that the U.S. Postal Service issue regulations to implement new subsections (f) and (g) of section 3001 of title 39, United States Code. These regulations, which address the specifics of the notice required to be included in certain mailed matter, would not become effective until 180 days after enactment of the

legislation. Since the regulations would effect only those mailers who choose to continue after this period to employ the government look-alike marketing technique addressed by the legislation, the Committee concludes that S. 273 will not result in a significant regulatory burden.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes made in existing law made by the bill S. 273, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

TITLE 39, UNITED STATES CODE: POSTAL SERVICE

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PART IV—MAILED MATTER

* * * * *

§ 3001. Nonmailable matter

(a) * * *

* * * * *

(f) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the purchase of or payment for a product or service; and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

(1) such nongovernmental entity has such expressed connection, approval or endorsement;

(2)(A) such matter bears on its face, in conspicuous and legible type in contrast by typography, layout, or color with other printing on its face, in accordance with regulations which the Postal Service shall prescribe, the following notice: "THIS PRODUCT OR SERVICE HAS NOT BEEN APPROVED OR ENDORSED BY THE FEDERAL GOVERNMENT, AND THIS OFFER IS NOT BEING MADE BY AN AGENCY OF THE FEDERAL GOVERNMENT.", or a notice to the same effect in words which the Postal Service may prescribe; and

(B) the envelope or outside cover or wrapper in which such matter is mailed bears on its face in capital letters and in conspicuous and legible type, in accordance with regulations which the Postal Service shall prescribe, the following notice: "THIS IS NOT A GOVERNMENT DOCUMENT.", or a notice to the same effect in words which the Postal Service may prescribe; or

(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this

paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

(g) Matter otherwise legally acceptable in the mails which constitutes a solicitation by a nongovernmental entity for the contribution of funds or membership fees and contains a seal, insignia, trade or brand name, or any other term or symbol that reasonably could be interpreted or construed as implying any Federal Government connection, approval or endorsement is nonmailable matter and shall not be carried or delivered by mail, and shall be disposed of as the Postal Service directs, unless—

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(3) such matter is contained in a publication for which the addressee has paid or promised to pay a consideration or which he has otherwise indicated he desires to receive, except that this paragraph shall not apply if the solicitation is on behalf of the publisher of the publication.

[(f)] (i) * * *

[(g)] (j) * * *

§ 3005. False representations: Lotteries

(a) Upon evidence satisfactory to the Postal Service that any person is engaged in conducting a scheme or device for obtaining money or property through the mail by means of false representations, including the mailing of matter which is nonmailable under **[section 3001(d) of this title,]** subsection (d), (f), or (g) of section 3001 of this title or is engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind, the Postal Service may issue an order which—

(1) directs the postmaster of the post office at which mail arrives, addressed to such a person or to his representative, to return such mail to the sender appropriately marked as in violation of this section, if the person, or his representative, is first notified and given reasonable opportunity to be present at the receiving post office to survey the mail before the postmaster returns the mail to the sender;

(2) forbids the payment by a postmaster to the person or his representative of any money order or postal note drawn to the

order of either and provides for the return to the remitter of the sum named in the money order or postal note; and

(3) requires the person or his representative to cease and desist from engaging in any such scheme, device, lottery, or gift enterprise.

For the purposes of the preceding sentence, the mailing of matter which is nonmailable under [such section 3001(d)] *subsection (d), (f), or (g) of such section 3001* by any person shall constitute prima facie evidence that such person is engaged in conducting a scheme or device for obtaining money or property through the mail by false representations.

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